IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9730 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TILAK.B.SHARMA & ORS

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioner No. 1-15

Mr.Sood, Assistant GOVERNMENT PLEADER,

for Respondent Nos. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/12/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioners, who are 15 in number, have prayed that the action of the respondents in discontinuing the pay of the petitioners for holidays on which they have actually worked, be

quashed and aside and it is prayed that it may be held that the petitioners are entitled to salary for the period on which they have actually worked. By amendment, it is prayed that the order of recovery dated 22.7.1994, by which the Government decided to recover certain amount from the petitioners be quashed and set aside.

2. The grievance of the petitioners is that, looking to the job, which they are performing, they are required to perform duty even on holidays and that as per the Circular dated 8th July, 1993, which is issued by the Special Inspector General of Police (Administration), Ahmedabad, it is decided to discontinue the special entitlement in respect of the holidays on which the petitioners have actually served.

The grievance of the petitioners, in short, is that the petitioners are entitled to get salary, as per the rules, for the days on which they have actually served by not taking benefit of leave, even though it is a public holiday or Saturday or Sunday. It seems that, previously, before the said Circular was issued, the Department used to pay holiday allowances for the work which the petitioners have put in during the second and fourth Saturdays and other public holidays. However, by an order dated 22.7.1994, order of recovery was issued against the petitioners, asking them to pay back the said amount which is paid towards salary for performing duty during the holidays.

3. At the time of hearing of this petition, it is argued by Mr.Rana, learned Advocate for the petitioners, that the order of recovery is not proper, as, according to him, the amount of salary was paid to the petitioner for performing extra duty on holiday or on Saturday or Sunday, as the case may be, and, therefore, the action of the State Government in recovering the said amount is not just and proper. This Court has already stayed the order of recovery at the time of admitting this petition. It is argued by Mr.Rana that, in fairness, the State Government should pay the salary to the petitioners for the days on which they have actually worked and when they were denied the benefit of holiday of Saturday and Sunday, as the case may be.

4. Mr.Sood, learned AGP, on the other hand, submitted that the facts of the present petition are different from the one which is disposed of by this Court while deciding Special Civil Application No.1448 of 1988. Mr.Sood, however, submitted that so far as the recovery of the amount is concerned, it is, as such, not in

dispute that the petitioners have already worked during holidays or Saturdays and Sundays for the intervening period and that, initially, they were paid the amount, but, subsequently, recovery order was passed. It is also not in dispute that the petitioners have actually worked and on that basis, they were paid amount, which is sought to be recovered, later on. Mr.Sood, however, submitted that in the Training School of the State Reserve Police, where the petitioners were working at the relevant time, the nature of work is different and if they had asked, they could have been given leave also and, therefore, even if they had worked on holidays, the Commandant decided to pass an order of recovery.

5. I have heard both the sides in this behalf.

So far as the order of recovery is concerned, in my view, the same is absolutely unsustainable. It is required to be noted that for the intervening period, during which they have worked, they have been paid salary and, subsequently, now, it is sought to recover the salary by the order of the Commandant. It is clear that there is no order from the State Government asking the Commandant to pass any recovery order. Since the petitioners have already served for the period in question without taking benefit of holidays, and they have been paid accordingly, now, there is no question of recovering any amount without there being any instructions from the State Government in this behalf and, therefore, the impugned order of recovery is unsustainable and it is required to be set aside and the same is accordingly set aside. It is held that it is not open for the respondent to recover any amount from the salary of the petitioners on the aforesaid count.

6. It is submitted by Mr.Rana, learned Advocate for the petitioners, that, after 1994, the petitioners have also worked on Saturdays or on Sundays or on public holidays, for which they are entitled to be paid salary. This argument is vehemently opposed by Mr.Sood, learned AGP, on the ground that there is nothing on the record to show that the concerned petitioners have worked even subsequent to 1994 on public holidays or on Saturdays and Sundays. Since there is no material before this Court so far as this aspect is concerned, it would be open for the petitioners to make appropriate representation to the appropriate authority for the purpose of granting salary for the period during which they have actually served, either on public holidays or on Saturday or Sunday. If any such representation is made, the authority may take appropriate decision in accordance with law, within three

months from the date of receipt of the said representation, and while deciding the said representation, the authority may consider whether they have really worked on the aforesaid days, i.e. on Saturday, Sunday or on holidays, without taking benefit of leave for the aforesaid period and while taking decision, the judgment of this Court rendered in Special Civil Application No.1448 of 1988, if the same is applicable, may also be taken into consideration.

It is hoped that, ultimately, if it is found that the petitioners have worked on holidays, Saturdays or Sundays, as pointed out above, the Authority may pass appropriate order in accordance with law and by keeping in mind the judgment given by this Court in the aforesaid Special Civil Application, since there is no material before this Court that the petitioners have actually served after 1994 and since it is not possible to adjudicate the said point in this petition.

It is, however, clarified that if the decision on the representation is against the petitioners, it will be open to them to challenge the same in accordance with law, so far as it relates to the period for getting salary which is remaining for the period subsequent to 1994, i.e. after the filing of this petition. It is, ultimately for the Government to decide the same as per the record and as per the Rules and Regulations in this behalf. It is clarified that so far as the aforesaid aspect is concerned, this Court has not expressed any opinion on the same and this petition is decided mainly on the question of recovery.

7. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute, with no order as to costs.

1st December, 2003 (P.B. Majmudar, J.)

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(apj)